
(2008) 01 DEL CK 0093

In the Delhi High Court

Case No : MAC Appeal No. 11 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Ram Rati and Others

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) ACJ 2758

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pradeep Gaur, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The appellant, National Insurance Co.Ltd., insurer of the offending vehicle has preferred an appeal challenging the impugned order dated 12.11.2007 passed by the learned MACT. The impugned award has arisen out of the claim petition, viz., Suit No. 102/2007 filed by respondent Nos. 1 & 2 against the appellant as well as against respondent Nos. 3 to 7 claiming compensation for the death of Shri Rajiv Kumar.

2. The brief facts, which are necessary for deciding the present appeal inter alia, are that on 24.6.2005 at about 2.20 A.M., the deceased was plying the TSR being registration No. DL-1RC-0476 on Rohini main road towards Sector V and when he reached near the red light point of BSA Hospital, Rohini, Delhi, suddenly one bus came from the direction of Japanese Park in a rash and negligent manner and hit the said TSR scooter as a result of which the deceased fell out of the TSR and sustained fatal injuries and died at the spot.

3. Counsel for the appellant contends that the Tribunal has failed to consider the clear violation of the terms and conditions of the insurance policy. The contention of the counsel for the appellant is that the registered owner of the offending TSR had handed over his vehicle to some other person who was driving the offending vehicle at the time of the accident and Therefore such driving by the

unauthorised driver is in clear cut violation of the terms of the permit conditions. Placing reliance on Section 66 of the M.V. Act, the counsel for the appellant contends that the permit of auto rickshaw is not transferable and the said auto rickshaw has to be driven by the permit holder himself. Counsel for the appellant has also placed reliance on Section 149(2)(a)(i)(c) of the M.V. Act to contend that use of vehicle by person not holding the permit is in clear violation of the conditions of the policy and Therefore, the appellant insurance company is totally absolved and exonerated from paying any compensation amount in favor of the claimants. Not only this, in such a case the insurance company even cannot be burdened to pay the amount at the first instance and then to recover the same from the insured. Section 66 and Section 149(2) of the M.V. Act are reproduced as under:

66.(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contact carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

[Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailor.]

(3) The provisions of Sub-section (1) shall not apply-(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleaning, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the

mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered u/s 43 while proceeding empty to any place for the purpose of registration of the vehicle;

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(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of Sub-section (3), Sub-section (1) shall, if the State Government by rule made u/s 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

Section 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of

any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-- (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle-- (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

4. In support of his arguments counsel for the appellant has also placed reliance on the interim order dated 16.5.2007, passed by this Court, in MAC APP. No. 283/2007 and MAC APP. NO. 282/2007 directing stay on the operation of the award against the appellant insurance company in similar facts of the case. Counsel for the appellant further contends that the appellant insurance company cannot be made liable to pay the compensation amount as no driving license of the deceased driver was produced or proved on record even after notice under Order 12 Rule 8 was served by the appellant insurance company. The last contention of the counsel for the appellant is that the Tribunal has not given recovery rights against the unregistered owner of the offending vehicle. In support of his argument counsel for the appellant has placed reliance on the judgment of the Apex Court in Rikhi Ram and Another Vs. Smt. Sukhrania and Others, .

5. I have heard learned Counsel for the appellant at considerable length and have perused the record.

6. It is an admitted case between the parties that Mr. Bharat Sharma was the

registered owner of the offending TSR bearing registration No. DL-1RC-0476. It is also not in dispute that the said TSR was duly insured with the appellant insurance company in the name of the registered owner of the vehicle. It is also not in dispute that the said TSR vehicle at the time of the accident was being driven by the deceased without there being any transfer of permit in his name. It is also not in dispute that under the policy, the risk of the driver was fully covered. It is further not in dispute that Mr. Bharat Sharma, registered owner of the offending vehicle had a valid permit for the said TSR. Merely because of the fact that the deceased at the relevant time of the accident was not holding a permit in his name cannot absolve the insurance company from its liability to pay the compensation amount as far as third party risks are concerned. It is a settled legal position that insurer of the offending vehicle can raise defense as circumscribed u/s 149(2) of the M.V. Act and beyond that the insurer cannot raise any wider defense unless in the given facts and circumstances of the case the defense by the insurance company is taken over u/s 170 of the M.V. Act. A cursory glance at Section 149(2)(i)(c) would reveal that it is only in a case where the vehicle on the date of contract of the insurance was being plied for hire or reward but such a vehicle itself is not covered by the permit, then any violation of permit conditions can be claimed. Clause (C) of Section 149(2)(i) also postulates that the vehicle was being used for a purpose other than the one restricted by the permit conditions. Mere use of the vehicle by a person not authorised by the permit being not the registered owner, cannot give right to the insurance company to escape its liability u/s 149(2) of the M.V. Act, when the use of a particular vehicle in itself is not in contravention with the permit conditions.

7. Counsel for the appellant has placed reliance on the interim stay granted by this Court in MAC APP. Nos. 283/2007 and 282/2007, but no advantage of the said interim protection can be claimed by the appellant as the Court has not dealt with the issue in question in detail and has not passed any final order. The reliance placed by the counsel for the appellant on the terms and conditions of the permit which provide that the permit holder alone shall drive the vehicle and the permit shall not be transferable, can be of no help to the case of the appellant as the mandate of Section 149(2) of the M.V. Act as discussed above is that it is only in a case where the breach of specific condition of the policy confining to the grounds as are given in Sub-clause (a) to (d) of Clause 1 of 149(2)(i) of the M.V. Act is established. The case of the appellant is not covered under either of the said clauses and Therefore, it cannot be held that there is any breach of a specified condition of the policy.

8. As regards the other contention of the counsel for the appellant that the deceased driver was not holding any driving license, I find the argument of the counsel for the appellant equally devoid of any force. The Tribunal in the impugned award has clearly observed that no question to this effect was put by the appellant insurance company to PW-2, so as to suggest that the deceased was not holding any driving license. Even otherwise the owner of the vehicle has

duly proved on record that he himself saw the driving license of the deceased before handing over the TSR to him. Therefore, on this aspect, no infirmity in the impugned award is traced. The third contention of the counsel for the appellant is also devoid of any merit. The Tribunal has given the recovery rights to the appellant insurance company since the Tribunal was satisfied that the deceased was not having any valid permit to drive the TSR. The Tribunal, thus held that the owner of the registered vehicle had violated the terms of the permit by handing over the TSR to a person who was not having any valid permit to drive the TSR. Once the appellant insurance company has been given the recovery rights to claim the insured amount from the registered owner/insured of the offending vehicle, no grievance can be made that why such similar rights have not been given to the appellant insurance company to recover the award amount even from the unregistered owner. The Apex Court in Rikhi Ram's case (Supra) as cited by the counsel for the appellant is found to be not applicable in the facts and circumstances of the present case. In the facts of the said case there was a transfer of the vehicle by the insured in favor of the transferee and in view of this background, the Apex Court has held that it would be open to the insurer to recover the amount either from the insured or from the transferee of the vehicle. In the present case the vehicle was not transferred by the registered owner in favor of the deceased driver but the deceased driver was not having the permit in his name to drive the said offending TSR.

9. In the light of the above discussion, I do not find any merit in the present appeal.

10. The appeal is dismissed accordingly.